

**REMARKS**

Applicants wish to thank the Examiner for reviewing the present patent application. With respect to new claim 9, support for the same may be found, among other places, on page 7 of the specification, lines 28-35, as originally filed. All other amendments have been made to correct typographical errors. Therefore, no new matter has been added and all amendments comply with 35 USC §132.

I. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1 and 3 under 35 USC §102(b) as being anticipated by Koene et al., U.S. Patent No. 4,534,983 (hereinafter, '983). In the rejection, the Examiner mentions, in summary, that the '983 reference teaches a process for flavoring tea in which dry tea leaves (vegetable material) and micro-encapsulated flavor (tea solids) are mixed together and later sprayed with a water-based low viscosity adhesive solution and thoroughly mixed. The Examiner believes that the '983 reference shows the steps of claims 1 and 3 and further believes that the anticipatory rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As set forth in independent claim 1 of the present invention, a method is described for preparing a fabricated leaf tea product comprising mixing leaf tea with tea solids

derived from tea powders, the method being characterized in that the mixture of tea leaves and tea powder is simultaneously wetted and dried.

The invention of claim 1 is further defined by the dependent claims, which claim, among other things, that the fabricated leaf tea product is dried to about 3 to about 8% moisture and that the fabricated leaf tea product gives an infusion under 10-15 seconds with water at a temperature between 80 and 90°C (new claim 9).

In contrast, the '983 reference merely describes a process for flavoring dry vegetable matter. The process of the '983 reference requires mixing dry pieces of vegetable leaf and stem and mixing the same with one or more micro-encapsulated flavors. The mixture is simultaneously or subsequently sprayed with an organic solvent that can be ethanol, isopropanol, propylene glycol, glycerol and benzyl alcohol followed by the addition of an aqueous adhesive solution. The '983 reference does not, even remotely, teach, suggest, or disclose mixing tea leaves and tea powder and simultaneously wetting and drying the resulting mixture. As set forth in the specification of the present application at page 4, tea powder is defined to mean a product prepared by extracting tea material into water from tea leaves and then subsequently concentrating and drying the infusion to give a powder. Therefore, it is clear that tea powder as defined by the Applicants, cannot, even remotely, be considered to be micro-encapsulated flavors as asserted by the Examiner.

In view of the above, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in a single reference, namely the '983 reference. Therefore, Applicants respectfully submit that the novelty rejection is improper and must be withdrawn and rendered moot.

## II. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1-4 under 35 USC §102(b) as being anticipated by Carns et al., EP 0 910 956 A1 (hereinafter '956).

In the rejection, the Examiner mentions, in summary, that the '956 reference discloses a tea bag with a tea mixture of tea leaves and tea solids. The Examiner notes that the presently claimed invention is directed to a process that simultaneously wets and dries a mixture of tea leaf and tea powder. Nevertheless, the Examiner believes that the claimed invention describes tea leaves and tea solids that are simultaneously wet at some point and dried together and that this is taught by the '956 reference where tea concentrate is sprayed onto tea leaves and dried. The Examiner further believes that the limitations of claim 2, 3 and 4 are also taught in the '956 reference, and therefore, the Examiner believes that the novelty rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a superior method for preparing fabricated tea leaf product by mixing tea leaves and tea powder and wetting and drying the resulting mixture simultaneously.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, the amount of tea powder employed, the amount of moisture present

within the fabricated leaf tea product, that wetting and drying are performed in a fluidized bed and that the resulting fabricated leaf tea product gives an infusion under 10-15 seconds with water at a temperature between 80 and 90°C.

In contrast, the '956 reference is merely directed to a tea bag for iced tea beverages. The '956 reference does not, even remotely, describe a process where tea leaves and tea powder are simultaneously wetted and dried. The '956 reference is merely directed to spraying tea concentrate onto tea leaves. No mixture of tea leaf and tea powder is made whereby the same is simultaneously wetted and dried as claimed in the present invention. In fact, the '956 reference suggests spraying tea concentrate onto tea leaves either simultaneously or in separate steps. No wetting step and no drying step are simultaneously required or suggested. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in a single reference, namely the '956 reference. Therefore, the rejection made under 35 USC §102(b) should be withdrawn and rendered moot.

### III. Rejection Under 35 USC §103

The Examiner has rejected claims 5 and 6 under 35 USC §103 as being unpatentable over Koene et al., U.S. Patent No. 4,534,983 (hereinafter '983) as applied to claims 1 and 3 and further in view of Hampton et al., GB 2 239 305 A (hereinafter '305) and Menzi et al., U.S. Patent No. 6,056,949 (hereinafter '949).

In the rejection, the Examiner mentions, in summary, that claim 5 recites the use of hot water to wet tea product and claim 6 recites a temperature range for the hot water. The Examiner admits that the '983 reference is silent as to water temperature and the

temperature of circulating air in drying equipment, as well as the type of equipment used. Nevertheless, the Examiner relies on the '305 reference for mentioning the use of fluidized beds and the '949 reference for mentioning the use of air at a temperature from about 30 to 80°C. In view of the above, the Examiner believes that it would have been obvious to modify the process taught by the '983 reference and further believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a superior process for making a fabricated leaf tea product whereby the fabricated leaf tea product is made by combining or mixing tea leaves and tea powder and simultaneously wetting and drying the resulting mixture. Independent claim 1 is further defined by the dependent claims which claim, among other things, that the mixture is wetted by spraying hot water onto a fluidized bed and that the hot water is at a temperature in the range from about 30 to 60°C.

As already made of record, the '983 reference does not, even remotely, teach, suggest or disclose a process for mixing leaf tea with tea powder whereby the resulting mixture is simultaneously wetted and dried. The vast deficiencies of the '983 reference are not cured by the '305 and the '949 reference since the former is merely directed to drying black tea leaf and the latter is merely directed to a process for preparing spherical or substantially spherical free flowing granulated material. Moreover, none of the

references relied on by the Examiner even remotely describe a process for making a fabricated leaf tea product that gives infusion as described in newly filed claim 9.

In view of this, all the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner. Therefore, a *prima facie* case of obviousness has not been established and Applicants request that the obviousness rejection be withdrawn and rendered moot.

#### IV. Rejection Under 35 USC §103

The Examiner has rejected claims 7 and 8 under 35 USC §103 as being unpatentable over Koene et al., U.S. Patent No. 4,534,983 (hereinafter '983) as applied to claims 1 and 3 and further in view of Hampton et al., GB 2 239 305 (hereinafter '305) and further in view of Menzi et al., U.S. Patent No. 6,056,949 (hereinafter '949).

In the rejection, the Examiner mentions, in summary, that the '983 reference is applied to claims 1 and 3 and that the '949 reference is relied on for showing a process for making granulated flavorings for tea at a temperature of about 30-80°C. It is not clear from the Office Action how the Examiner is relying on the '305 reference.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 1 is directed to a method for making a fabricated leaf tea product by mixing tea leaves and tea powder such that the resulting

mixture is simultaneously wetted and dried. For the reasons mentioned above, it is clear that such important limitations are not, even remotely found in the '983 reference.

The invention of independent claim 1 is further defined by the dependent claims which claim, among other things, the temperature within the fluidized bed used in the superior method defined in claim 1, and that the fabricated leaf tea product gives an infusion under 10-15 seconds with water at a temperature within 80-90°C.

In contrast, and again, mixing tea leaves and tea powder and simultaneously wetting and drying the same after a mixture has been made is not even remotely taught in the '983 reference. The '949 reference does not cure any of the vast deficiencies of the '983 reference since the '949 reference is merely directed to a process for producing spherical or substantially spherical granulated materials that are free flowing.

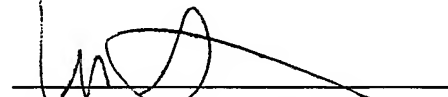
Moreover, and for completeness of the record, the '305 reference is only directed to drying tea leaf that has been fermented by employing a fluidized bed.

Since all the important and critical limitations set forth in presently claimed invention are not found in the combination of references relied on by the Examiner, an obviousness rejection consistent with 35USC §103 has not been presented. Therefore, Applicants respectfully request that the rejection made under 35 USC §103 be withdrawn and rendered moot.

Applicants submit that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions concerning the present patent application, the Examiner is kindly invited to contact the undersigned at his or her earliest convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edward A. Squillante, Jr.', is written over a horizontal line.

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